**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

MARVIN R. A. MANSON,	:	
Plaintiff,	:	Case No. 3:07CV406
vs.	:	District Judge Thomas M. Rose Magistrate Judge Sharon L. Ovington
BEHR DAYTON THERMAL PLANT LLC, *et al*.,	:	
Defendants.	:	

ORDER

Plaintiff Marvin R.A. Manson, a resident of Trotwood, Ohio, brings this case *pro se* raising allegations and claims against his former employer, Behr Dayton Thermal Plant, LLC, and others.

The Court previously granted Manson's Application to Proceed *in forma pauperis* ("IFP") under 28 U.S.C. §1915. This case is presently before the Court for a *sua sponte* review to determine whether Manson's Complaint, or any portion of it, should be dismissed because it is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a named defendant who is immune from such relief. If the Complaint suffers from one or more of these deficiencies, it must be dismissed under 28 U.S.C. §1915(e)(2)(B).

By enacting the original *in forma pauperis* statute, Congress recognized that a

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"litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." *Denton v. Hernandez,* 504 U.S. 25, 31 (1992)(quoting *Neitzke v. Williams,* 490 U.S. 319, 324 (1989)). To prevent such abusive litigation, Congress authorized the federal courts to *sua sponte* dismiss an *in forma pauperis* Complaint if they are satisfied that the Complaint is frivolous or malicious. *Denton*, 504 U.S. at 31; *see* 28 U.S.C. §1915(e)(2)(B)(I).

Viewing an *in forma pauperis* Complaint through lens of §1915(e)(2)(B)(i), the Court asks whether the Complaint raises a claim with a rational or arguable basis in fact or law; if not, it is frivolous or malicious and subject to dismissal. *See Neitzke,* 490 U.S. at 328-29; *see also Lawler v. Marshall*, 898 F.2d 1196, 1198 (6th Cir. 1990). A Complaint has no arguable legal basis when, for example, the defendant is immune from suit or when the plaintiff claims a violation of a legal interest which clearly does not exist. *Neitzke*, 490 U.S. at 327. An action has no arguable factual basis when the allegations are delusional or irrational or "wholly incredible." *See Denton*, 504 U.S. at 32; *see also Lawler*, 898 F.2d at 1199.

Congress has also authorized the *sua sponte* dismissal of a Complaint that fails to state a claim upon which relief may be granted or that seeks monetary relief from a defendant who is immune from such relief in this Court. 28 U.S.C. §1915(e)(2)(B)(ii-iii).

In the instant case, Manson's Complaint is not frivolous because he has not alleged delusional or irrational facts. He instead seeks to challenge the termination of his employment even though he engaged in a good faith attempt to timely submit certain "FMLA papers" to Behr Dayton Thermal. Construing Manson's allegations liberally in his favor and accepting his factual allegations as true, his challenges to the termination of employment concern his rights under the Family and Medical Leave Act and/or the Americans with Disabilities Act. In light of this and because Manson is not required to plead facts sufficient to establish each and every element of a *prima facie* case under these statutes, *cf. Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506, 511-12 (2002), it cannot be concluded at this early juncture of the case that his *pro se* Complaint is frivolous, malicious, or fails to state a claim for relief.

Accordingly, Manson's Complaint is not subject to dismissal under 28 U.S.C. §1915(e)(2).

IT IS THEREFORE ORDERED THAT:

1. The United States Clerk of Court serve a copy of the Complaint, summons, the Order granting Plaintiff *in forma pauperis* status, and this Order upon the named defendants as directed by Plaintiff. All costs of service shall be advanced by the United States.

2. Plaintiff must serve the named defendants – or their attorney in the event the attorney's appearance is entered in the record – with a copy of every document submitted for consideration by the Court. Plaintiff shall include with the original paper to be filed with the Clerk of Court a certificate stating the date and a true and correct copy of any document mailed to defendant or his attorney. Any paper received by a District Judge or

Magistrate Judge that has not been filed with the Clerk of Court or that fails to include a certificate of service will be disregarded by the Court. Plaintiff must inform the Clerk of Court promptly of any changes of address which he has during the pendency of this lawsuit. Failure to do so may result in dismissal of his case for failure to prosecute.

October 29, 2007

s/ Sharon L. Ovington
Sharon L. Ovington
United States Magistrate Judge